

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY LEE EDGINGTON, JR.,

Plaintiff,

CIVIL ACTION NO. 07-CV-10268-DT

VS.

DISTRICT JUDGE PAUL D. BORMAN

VW CREDIT, INC.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

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**OPINION AND ORDER GRANTING DEFENDANT'S
MOTION TO COMPEL DISCOVERY**

This matter comes before the Court on Defendant's Motion to Compel Discovery filed on May 1, 2007. (Docket no. 9). Plaintiff filed a Response brief on May 18, 2007. (Docket no. 15). The matter has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 10). The Court dispenses with oral argument pursuant to E. D. Mich. LR 7.1(e). The matter is now ready for ruling.

Defendant shows that it served on Plaintiff its First Set of Discovery Requests Dated March 14, 2007 on March 14, 2007. (Docket no. 9, ex. A). This set of discovery requests consisted of 11 Interrogatories and 8 Requests to Produce Documents. (*Id.*) Defendant's counsel sent an e-mail to Plaintiff's counsel on April 19, 2007 noting that responses were due on April 16, 2007, but none had been received. (*Id.* ex. B). Defendant's counsel sent another e-mail to Plaintiff's counsel on April 26, 2007 noting that no discovery responses had been received and advising that he would be filing a motion to compel. (*Id.*) In its Motion to Compel, Defendant states that no responses to the discovery requests have been received. Defendant contends that Plaintiff has waived any objections to its

discovery requests and seeks an order compelling Plaintiff to answer the Interrogatories and respond to the Requests to Produce. Defendant also asks for expenses and sanctions under Fed. R. Civ. P. 37.

Plaintiff has responded to Defendant's motion. Plaintiff states that he has been out of the state for over two months handling a relative's illness and attending their funeral and post-death details. He further states that he is back in the State and is ready to proceed. Plaintiff asks that he be granted 14 days to respond to the discovery request. (Docket no. 15).

Pursuant to Fed. R. Civ. P. 33 and 34, Plaintiff's responses to Defendant's Interrogatories and Requests to Produce were due within 30 days after service of the discovery request. Plaintiff does not dispute that he did not timely respond. Indeed, Plaintiff apparently still has not responded. Plaintiff has therefore waived any objections to these discovery requests. *See* Fed. R. Civ. P. 33(b)(4); *Phillips v. Dallas Carriers Corp.*, 133 F.R.D. 475, 477 (M.D.N.C. 1990) (Rule 34 waiver). Plaintiff offers that he was out of state for two months as the reason why he failed to respond to Defendant's discovery requests. However, Plaintiff does not allege that he contacted Defendant's counsel to advise counsel of this and to seek an extension of time to respond to the requests. Plaintiff may not simply fail to respond or give any reason to opposing counsel for not doing so. Plaintiff states that he is now ready to respond to these requests and asks for 14 days to do so. Discovery closes on July 6, 2007. The Court will therefore grant Defendant's Motion to Compel and give Plaintiff a few days less to respond than he requested in light of the discovery cut-off date and the ample time Plaintiff has had to draft answers to the Interrogatories and gather the requested documents. The Court will decline to award sanctions and expenses at this time.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel Discovery (docket no. 9) is **GRANTED** to the extent that Plaintiff must serve full and complete responses to Defendant's First Set of Discovery Requests Dated March 14, 2007 by 5:00 p.m. on Friday, June 8, 2007.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: May 30, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Counsel of Record on this date.

Dated: May 30, 2007

s/ Lisa C. Bartlett
Courtroom Deputy